

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTHANEI L. LINDALE,	§	
	§	No. 549, 2009
Defendant Below,	§	
Appellant,	§	
	§	Court Below: Superior Court
v.	§	of the State of Delaware,
	§	in and for Kent County
STATE OF DELAWARE,	§	
	§	Cr. No. 0810021083
Plaintiff Below,	§	
Appellee.	§	

Submitted: February 24, 2010
Decided: April 19, 2010

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 19th day of April, 2010, upon consideration of the briefs of the parties, it appears to the Court that:

1) Anthanei L. Lindale appeals his convictions, following a jury trial, of two counts of unlawful sexual contact. He argues that the trial court abused its discretion in failing to redact the videotape of a Child Advocacy Center (CAC) interview with the victim. In addition, Lindale contends that the victim's statement was inadmissible under 11 *Del. C.* § 3507 because the victim did not provide an adequate foundation.

2) In October 2008, Karen Lee, told her aunt that her step-brother, Lindale, had sexual contact with her on two occasions. Lee, who was 7 years old at the time, lived with her mother. She and another brother, Joshua, visited her father on weekends. Lee's father lived with his girlfriend, her two sons, and their son, Lindale. When Lee stayed at her father's house, she and Joshua slept on a small, living room couch. Lindale slept on a larger, living room couch. Lee told the CAC interviewer that, on one occasion while she was staying at her father's house, Lindale pulled down his pants and made her "touch his private." On another occasion, Lindale fondled Lee's genitals.

3) Shortly after Lee reported these incidents to her aunt, CAC interviewed her and recorded the interview on a DVD. At trial, Lindale moved to redact from the DVD: 1) the naming and drawing of anatomical parts; 2) the discussion about "good touch/bad touch"; and 3) the concluding "safety message." The trial court decided that, although those portions of the DVD were not particularly probative, they were "benign" and did not have to be removed.

4) Lindale argues that, under *Hassan-El v. State*,¹ all comments, questions, and statements by the interviewer must be redacted. Even if *Hassan-El* is not read that broadly, Lindale contends that the specific portions of the DVD identified above

¹911 A.2d 385 (Del. 2006).

should have been redacted. He says that the comments were superfluous, they were not probative, and they prejudiced Lindale by making Lee more sympathetic.

5) In addition, Lindale argues that the “safety message,” should have been redacted because, in it, the interviewer vouches for Lee’s credibility. The CAC interviewers routinely end their interviews by reminding the children which parts of their bodies are private, and instructing them to report any improper contact to an adult right away. Significantly, this interviewer said, “Look, I hope nothing like this happens again, but if it does you must tell someone right away, ok?”² By referring to something like this “happening again”, the interviewer implicitly accepted Lee’s account of past sexual contact.

6) We conclude that the trial court acted within its discretion in refusing to redact the anatomy drawings and the “good touch/bad touch” discussion. Those portions of the DVD may have been superfluous, but they were not prejudicial. The same is not true for the “safety message”. The interviewer conveyed his belief that Lee’s account was true when he told her that he hoped nothing like this ever happened again. Thus, we conclude that the trial court abused its discretion in failing to redact the “safety message” portion of the DVD.

²State’s Trial Exhibit 1, Appellant’s Opening Brief at 7.

7) As in several other “redaction” cases, however, we are satisfied that the failure to redact was harmless beyond a reasonable doubt.³ The “safety message” is part of the standard conclusion to an interview. Its purpose is to tell the child how to respond to any sexual contact in the future. In the process of conveying that message, this interviewer used wording that indirectly vouched for Lee’s credibility. We conclude that the interviewer’s improper choice of words, in context, had minimal impact and was immaterial to the jury’s verdict.

8) Lindale also complains that the CAC interview was inadmissible because the State failed to provide an adequate foundation. “Before an out-of-court statement may be admitted under 11 *Del. C.* § 3507, the declarant must touch on the events perceived and the out-of-court statement itself.”⁴ The witness must testify “about both the events and whether or not they are true.”⁵ Lee provided the required information. She testified that: 1) she gave a statement to Mr. Rick at the CAC; 2) no one made her talk to him; 3) she told him everything that happened truthfully; and 4) the statement was about Lindale “touching me where I didn’t want him to.”⁶

³See: *Miles v. State*, 2009 WL 4114385 (Del. Supr.); *Mason v. State*, 963 A.2d 125 (Del. 2008).

⁴*Miles v. State*, 2009 WL 4114385 at * 3 (Internal quotations omitted.).

⁵*Ray v. State*, 587 A.2d 439, 444 (Del. 1991).

⁶Appellee’s Appendix, B-2.

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court be, and the same hereby are, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice